

1 SENATE BILL 466

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO BUSINESS; ENACTING THE ANTI-PROFITEERING ACT;
12 PROHIBITING PROFITEERING DURING AN EMERGENCY OR DISASTER;
13 PROVIDING PENALTIES; DECLARING AN EMERGENCY.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 Section 1. SHORT TITLE.--This act may be cited as the
17 "Anti-Profiteering Act".

18 Section 2. DEFINITIONS.--As used in the Anti-Profiteering
19 Act:

20 A. "abnormal market disruption" means any change in
21 the market proximately caused by an emergency or disaster where
22 market forces are or appear likely to be insufficient to ensure
23 reasonably stable prices of necessary property or services;

24 B. "disaster" means a natural or man-made event,
25 including, but not limited to, a tornado or other severe storm,

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1 earthquake, flood, fire, riot, act of war, terrorism or civil
2 disorder. The court shall find that an event constitutes a
3 disaster if the event results in the declaration of a state of
4 emergency or disaster by the president of the United States or
5 the governor;

6 C. "necessary property or service" means any
7 necessary property or service for which consumer demand does,
8 or is likely to, increase as a consequence of the emergency or
9 disaster and includes, but is not limited to, consumer food
10 items or property, property or services for emergency cleanup,
11 emergency supplies, communication supplies and services,
12 medical supplies and services, home heating fuel, building
13 materials and services, freight, storage services, housing,
14 lodging, transportation and motor fuels;

15 D. "profiteer during the time of a state of
16 emergency or disaster" means unjustifiably increasing during a
17 time of a state of emergency or disaster the price at which any
18 necessary property or service is offered for sale to retail
19 consumers. In determining whether the price increase described
20 in this subsection is unjustified, the court shall consider all
21 relevant circumstances, including the following:

22 (1) whether the price charged by the alleged
23 profiteer during the time of a state of emergency or disaster
24 grossly exceeded the average price charged by the alleged
25 profiteer for similar property or services at the same location

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1 during the twenty days prior to the state of emergency or
2 disaster, and an increase of more than twenty percent shall be
3 prima facie evidence of gross excess;

4 (2) whether the price charged by the alleged
5 profiteer during the time of a state of emergency or disaster
6 grossly exceeded the average price at which the same or similar
7 property or services were readily obtainable by other consumers
8 in the trade area at the same location during the twenty days
9 prior to the state of emergency or disaster;

10 (3) whether the price sought by the alleged
11 profiteer would have resulted in a profit margin greater than
12 the alleged profiteer's usual and customary profit margin;

13 (4) whether the price sought by the alleged
14 profiteer was a result of historical seasonal price changes;
15 and

16 (5) whether the increase in the price charged
17 by the alleged profiteer during the time of a state of
18 emergency or disaster was directly attributable to additional
19 costs incurred by the alleged profiteer; proof the alleged
20 profiteer incurred such additional costs shall constitute a
21 justifiable price increase that shall not be deemed
22 unconscionable; and

23 E. "time of a state of emergency or disaster" means
24 the time period specified in an order by the governor or a
25 district court, upon a petition by the office of the attorney

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1 general, declaring an abnormal market condition, but such time
2 shall not exceed thirty days. The governor or district court
3 may extend that period of time through the issuance of not more
4 than one additional order for not more than thirty additional
5 days for each declared emergency or disaster. Notwithstanding
6 the provisions of this subsection, the period of time during
7 which the restrictions imposed by this section are in effect
8 may be extended or terminated by a joint resolution of the
9 legislature.

10 Section 3. PROFITEERING DURING THE TIME OF A STATE OF
11 EMERGENCY OR DISASTER.--

12 A. It is an unconscionable trade practice pursuant
13 to the Unfair Practices Act for any person to profiteer during
14 the time of a state of emergency or disaster as declared by the
15 president of the United States or the governor; provided that
16 the governor or, upon a petition by the attorney general, the
17 district court in a county affected by an emergency or disaster
18 issues an order declaring that the emergency or disaster has
19 caused or appears likely to cause an abnormal market disruption
20 within the state. In an order declaring an abnormal market
21 condition, the governor or court shall specify:

22 (1) the cause of the abnormal market
23 disruption;

24 (2) the geographic area to which the abnormal
25 market disruption applies; and

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1 (3) with particularity, those categories of
2 necessary property or services to which the restriction set
3 forth in this subsection shall apply.

4 B. This section does not apply to sales by growers,
5 producers or processors of raw or processed food products,
6 except for retail sales of such products to the ultimate
7 consumer within the area of the determined abnormal market
8 disruption.

9 Section 4. NOTICE PROVISIONS.--

10 A. Upon the governor's issuance of an executive
11 order regarding an abnormal market disruption pursuant to
12 Subsection E of Section 2 of the Anti-Profiteering Act, the
13 office of the governor shall immediately notify the public and
14 those registered with that office for the purpose of receiving
15 notice of the issuance of such an executive order. That office
16 shall notify the public by any means available, including the
17 office's web site, news media and electronic mail. Any person
18 may register with that office for the purpose of receiving such
19 notification.

20 B. Upon the issuance by a district court of an
21 order pursuant to Subsection E of Section 2 of the Anti-
22 Profiteering Act, the district court shall order the office of
23 the attorney general to notify the public by any means
24 available, including the office of the attorney general's web
25 site, the news media and electronic mail.

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1 Section 5. EXEMPTIONS.--

2 A. A person subject to the restrictions imposed by
3 Section 3 of the Anti-Profiteering Act may file a petition for
4 an exemption to those restrictions in the first judicial
5 district court or in any district court in a county included
6 within the geographic scope of an executive or court order
7 issued declaring an abnormal market disruption. Notice of a
8 petition for an exemption shall be served upon the attorney
9 general.

10 B. The court shall act upon a petition for
11 exemption pursuant to Rule of Civil Procedure 1-066 NMRA. The
12 court may grant the exemption if:

13 (1) the court determines that enforcement of
14 the restrictions of Section 3 of the Anti-Profiteering Act
15 could result in a catastrophic loss of life or property; or

16 (2) the petitioner shows that due to certain
17 circumstances the petitioner is unable to comply with the
18 restrictions of Section 3 of the Anti-Profiteering Act without
19 suffering undue hardship beyond the hardship suffered by
20 persons generally subject to those restrictions.

21 Section 6. PENALTIES, REMEDIES AND ENFORCEMENT.--

22 A. In an action brought by the office of the
23 attorney general, upon an entry of judgment or decree for a
24 willful violation of the prohibition against profiteering
25 during a state of emergency or disaster, a court may impose a

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1 civil penalty not to exceed one thousand dollars (\$1,000) per
2 violation with an aggregate total not to exceed twenty-five
3 thousand dollars (\$25,000) for any twenty-four-hour period.

4 B. Upon a showing to a court by the office of the
5 attorney general that a person has engaged in continuous and
6 willful violations of the prohibition against profiteering
7 during a state of emergency or disaster, the court may suspend
8 or revoke any license or certificate authorizing that person to
9 engage in business in this state or the court may enjoin any
10 person from engaging in business in this state.

11 C. The remedies provided in this section are in
12 addition to any available remedies otherwise provided by law.

13 Section 7. SEVERABILITY.--If any part or application of
14 this act is held invalid, the remainder or its application to
15 other situations or persons shall not be affected.

16 Section 8. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect immediately.